

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

FILED BY *eg* D.C.

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ROBERT R. DI TROLIO
CLERK, U.S. DIST. CT.
W.D. OF TN, MEMPHIS**JAMES CLARK,****Plaintiff,****v.****J. KENENS and G. STUBBS,****Defendants.****NO. 03-2977 B/An**

REPORT AND RECOMMENDATION

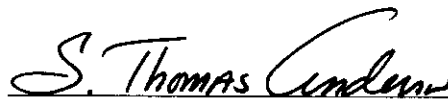
Before the Court is Defendant Gerald Stubbs' ("Stubbs") Motion to Dismiss Due to Plaintiff's Failure to Cooperate in the Discovery Process filed on February 16, 2005. United States District Judge J. Daniel Breen referred this matter to the Magistrate Judge for a report and recommendation. For the reasons set forth below, it is recommended that the Motion should be **GRANTED**.

Stubbs filed this Motion pursuant to Rules 37(b)(2) and 41(b) of the Federal Rules of Civil Procedure asking the Court to dismiss Plaintiff's cause of action due to Plaintiff's failure to cooperate in the discovery process. Stubbs served Plaintiff with discovery requests on May 19, 2004; however, Plaintiff has not responded to these requests. Stubbs filed a Motion to Dismiss for Plaintiff's Failure to Cooperate in the Discovery Process on September 13, 2004, but the undersigned recommended that the first motion to dismiss should be denied. Judge Breen later adopted the initial report and recommendation, and Plaintiff was given 15 days to provide written responses to Stubbs' discovery requests and 15 days to appear for a deposition.

Plaintiff did not file his responses within 15 days from entry of the adoption of the report and recommendation, and Plaintiff did not appear for his deposition; therefore, Stubbs filed the instant Motion to Dismiss. Initially, the Court reviewed the docket report and entered a report and recommendation on March 17, 2005 noting that the Clerk's office was forwarding all Court correspondence and Orders to Plaintiff's old mailing address. The Court, therefore, instructed the Clerk's office to forward copies of relevant Orders to Plaintiff at his updated mailing address at 203 Cottonwood St., Wynne, AR 72396.

Upon review, the Court notes that the mail sent to Plaintiff's updated mailing address in Arkansas was returned to the Court as undeliverable on April 11, 2005. As such, because Plaintiff has not informed the Court of his change in address and because Plaintiff has not cooperated in the discovery process, the Court recommends that Plaintiff's Motion to Dismiss for failure to cooperate in the discovery process should be **GRANTED**.

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN TEN (10) DAYS FROM THE DATE OF SERVICE OF THE REPORT. FAILURE TO FILE THEM WITHIN TEN (10) DAYS OF SERVICE MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.



S. THOMAS ANDERSON
UNITED STATES MAGISTRATE JUDGE

Date: May 11, 2005



Notice of Distribution

This notice confirms a copy of the document docketed as number 26 in case 2:03-CV-02977 was distributed by fax, mail, or direct printing on May 19, 2005 to the parties listed.

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Honorable J. Breen
US DISTRICT COURT